A

Peter James Tennet v Kaka Singh Dhaliwal (Secretary of the Malayan Racing Association)

B HIGH COURT (KUALA LUMPUR) — SUIT NO S4–24–1534 OF 2001
TENGKU MAIMUN JC
23 JANUARY 2007

C *Administrative Law — Judicial remedies — Declaration — Application for declaration that r 144(4) of the Malayan Racing Association Rules and Racing Stewards' decision dismissing plaintiff's appeal against the one year disqualification was null and void — Whether Stipendiary Stewards had misconstrued the rules — Whether r 144(4) unreasonable on Wednesbury ground and contrary to natural justice — Whether r 144(4) violates art 5 of the Federal Constitution*

D

Administrative Law — Rules of natural justice — Breach — Application for declaration that r 144(4) of the Malayan Racing Association Rules and Racing Stewards' decision dismissing plaintiff's appeal against the one year disqualification was null and void —
E *Whether Stipendiary Stewards had misconstrued the rules — Whether r 144(4) unreasonable on Wednesbury ground and contrary to natural justice — Whether r 144(4) violates art 5 of the Federal Constitution*

F The plaintiff, a professional horse trainer was charged at the Stipendiary Steward's inquiry on 14 October 2000 with the contravention of r 144(4) of the Malayan Racing Association Rules ('Rules') in that he as the trainer of a horse named 'WONDERFUL GENERAL' was satisfied with the manner in which jockey Damian Miller carried out his instructions and the manner in which jockey rode
G 'WONDERFUL GENERAL'. The plaintiff was found guilty and a one year disqualification was imposed on him under r 144(5) of the Rules. The plaintiff sought a declaration that r 144(4) of the Rules was null and void on various grounds and consequently that the decision of the Racing Stewards in dismissing the plaintiff's appeal against the one year disqualification and holding that the disqualification of one year was to take effect, deposit to be forfeited and that all
H horses in the plaintiff's stable were to be transferred within 14 days was null and void and of no effect whatsoever.

Held, dismissing plaintiff's application with costs:

I (1) From the records and given the facts, the Stipendiary Stewards had not misconstrued the Rules or had disregarded the Rules. Neither had the Stipendiary Stewards taken a wrong reason in finding the plaintiff guilty nor could it be said that it had come to a conclusion which cannot reasonably be entertained if it had properly understood sub-r (4) of the Rules. The charge

under sub-r (4) of the Rules was not defective, bad or illegal. There was no error of law on the record and this ground of contention by the plaintiff therefore failed (see para 13).

(2) Subrule (4) of the Rules was not unreasonable. Though it provides for the presumption of guilt of the trainer once the rider is found guilty under sub-r (2), this presumption of guilt may be rebutted which the plaintiff failed to do. As to the plaintiff's contention that sub-r (4) of the Rules is contrary to natural justice, there were no merits in this contention for the reason that there was ample evidence from the notes of proceedings that the plaintiff was given every opportunity to rebut the presumption. He understood the charge; was given a fair hearing and he was represented by a lawyer before the Racing Stewards (see para 14); *Woon Kwok Cheng v Tan Sri Chang Min Tat & Ors* (Pulau Pinang Civil Suit No 22–317 of1991, unreported) followed.

(3) The plaintiff's contention premised on art 5 of the Federal Constitution was misconceived. It was clear that 'life and personal liberty' in art 5 of the Federal Constitution do not encompass the other facets of life. Hence, the plaintiff's disqualification which resulted in him being deprived of his livelihood was not at all an issue under art 5 of the Federal Constitution (see paras 15–16); *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 followed.

[Bahasa Malaysia summary

Plaintif, seorang pelatih kuda profesional dikenakan tuduhan dalam siasatan Stipendiary Steward pada 14 Oktober 2000 kerana melanggar k 144(4) Peraturan Persatuan Lumba Kuda Malaya ('Peraturan tersebut') di mana beliau sebagai pelatih seekor kuda bernama 'WONDERFUL GENERAL' berpuas hati dengan cara joki Damian Miller melaksanakan arahannya dan cara joki itu menunggang 'WONDERFUL GENERAL'. Plaintif didapati bersalah dan beliau digantung selama setahun di bawah peraturan 144(5) Peraturan tersebut. Plaintif memohon satu deklarasi bahawa peraturan 144(4) Peraturan tersebut adalah terbatal dan tidak sah atas beberapa alasan dan berikutan itu bahawa keputusan Racing Stewards dalam menolak rayuan plaintif terhadap penggantungan setahun itu dan memutuskan agar penggantungan setahun itu mula berkuatkuasa, deposit diambil balik dan bahawa semua kuda dalam kandang plaintif dipindahkan dalam tempoh 14 hari adalah terbatal dan tidak sah dan tiada penguatkuasaan langsung.

Diputuskan, menolak permohonan plaintif dengan kos:

(1) Berdasarkan rekod dan fakta yang dikemukakan, Stipendiary Stewards tidak menyalah tafsir Peraturan tersebut atau tidak menghiraukan Peraturan tersebut. Maupun Stipendiary Stewards telah membuat alasan salah dalam memutuskan plaintif bersalah dan juga tidak boleh dikatakan bahawa telah diputuskan tidak boleh dilayan jika ia memahami sub peraturan (4) Peraturan tersebut. Pertuduhan di bawah sub peraturan (4) Peraturan tersebut tidak cacat atau menyalahi undang-undang. Tiada kesilapan undang-undang atas rekod dan alasan pendapat plaintif gagal (lihat perenggan 13).

(2) Sub peraturan (4) Peraturan tersebut adalah munasabah. Meskipun ia memperuntukkan andaian kebersalahan pelatih jika penunggang didapati bersalah di bawah sub peraturan (2), andaian kebersalahan ini boleh dipatahkan yang mana plaintif telah gagal untuk berbuat demikian. Memandangkan pendapat plaintif bahawa sub peraturan (4) Peraturan tersebut adalah bertentangan dengan keadilan asasi, tiada merit dalam hujah ini kerana terdapat keterangan mencukupi berdasarkan nota prosiding bahawa plaintif telahpun diberikan peluang untuk mematahkan andaian itu. Beliau memahami pertuduhan; diberikan perbicaraan yang adil dan diwakili peguam di hadapan Racing Stewards (lihat perenggan 14); *Woon Kwok Cheng v Tan Sri Chang Min Tat & Ors* (Pulau Pinang Civil Suit No 22–317 of1991, unreported) diikut.

(3) Hujah plaintif yang berdasarkan perkara 5 Perlembagaan Persekutuan telah disalah tanggap. Adalah jelas bahawa 'life and personal liberty' dalam perkara 5 Perlembagaan Persekutuan tidak meliputi aspek lain dalam kehidupan. Oleh itu, penggantungan plaintif yang menyebabkannya terkilan akan mata pencariannya bukan satu isu langsung di bawah perkara 5 Perlembagaan Persekutuan (lihat perenggan 15–16); *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 diikut.]

Notes

For cases on breach of natural justice, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 809–821.

For cases on declaration, judicial remedies, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 156–161.

Cases referred to

Gilmore, Re [1957] 1 All ER 796 (refd)

Ketua Pengarah Kastam v Ho Kwan Seng [1977] 2 MLJ 152 (refd)

Mohamed v Commissioner of Lands & Mines, Trengganu & Anor [1968] 1 MLJ 227 (refd)

Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan [2002] 3 MLJ 72 (folld)

Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261 (refd)

Woon Kwok Cheng v Tan Sri Chang Min Tat & Ors (Pulau Pinang Civil Suit No 22–317 of1991, unreported) (folld)

Legislation referred to

Federal Constitution art 5(1)

Malayan Racing Association Rules r 144(2), (3), (4), (5)

Gooi Soon Seng (Gooi & Azura) for the plaintiff.

CP Mahendran (RR Chelliah Brothers) for the defendants.

Tengku Maimun JC:

[1] By encl 1, the plaintiff is seeking, inter alia, a declaration that r 144(4) of the Malayan Racing Association Rules ('the Rules') is null and void on various grounds

and consequently that the decision of the Racing Stewards on 28 April 2001 in dismissing the plaintiff's appeal against the one year disqualification and holding that the disqualification of one year is to take effect from 30 April 2001, deposit to be forfeited and that all horses in the plaintiff's stable are to be transferred within 14 days is null and void and of no effect whatsoever. The plaintiff is also seeking for refund of deposit, damages, costs and other reliefs as the court may deem fit.

[2] The plaintiff, a professional horse trainer was charged at the Stipendiary Steward's inquiry on 14 October 2000 with the contravention of r 144(4) of the Rules in that he as the trainer of 'WONDERFUL GENERAL' was satisfied with the manner in which jockey Damian Miller carried out his instructions and the manner in which jockey rode 'WONDERFUL GENERAL' in Race 8, first day of the Penang October Meeting 2000 on Saturday, 14 October 2000. The plaintiff was found guilty and a one year disqualification was imposed on him under r 144(5) of the Rules.

[3] [The jockey was charged under r 144(2) of the Rules in that approximately 400M mark until the finish, he failed to ride with sufficient vigour and determination. The jockey was found guilty and was disqualified for one year].

[4] The plaintiff lodged an appeal against the decision of the Stipendiary Stewards and his appeal was heard by the Racing Stewards who had found no reason to reject the finding of the Stipendiary Stewards. In the circumstances the plaintiff's appeal was dismissed on 28 April 2001 and his disqualification for one year was to take effect from 30 April 2001. The plaintiff was given two weeks to transfer all the horses from his stable. The plaintiff however had obtained an injunction to stop the transfer of the horses.

[5] In his submission, learned counsel for the plaintiff forwarded three grounds to support the application in encl 1. The grounds are as follows:

(i) that there was an error on the face of the record. The charge preferred against the plaintiff was defective, bad and illegal and hence the conviction cannot stand. Learned counsel submitted that r 144(4) under which the plaintiff was charged is only an evidential rule which creates a rebuttable presumption of guilt and does not create an offence. Therefore in charging the plaintiff under r 144(4), the defendant had committed an error of law.

(ii) that r 144(4) is unreasonable on Wednesbury ground and contrary to natural justice. In this regard learned counsel submitted that r 144(4) is invalid as the presumption of guilt is not based on any finding of fact on the act or omission by the trainer.

(iii) that r 144(4) violates art 5 of the Federal Constitution. In so contending, learned counsel relied on *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261 where Gopal Sri Ram JCA held that the expression 'law' in art 5(1) of the Federal Constitution which reads "No person shall be deprived of his life or personal liberty save in accordance with law" includes procedural law and that if an unfair procedure is resorted to in the deprivation of a person's life or liberty, then the decision and the procedure are liable to be struck down.

[6] In opposition, learned counsel for the defendant submitted that there is no requirement under the rules of racing or the principles of natural justice that a charge must be formulated in the way a criminal charge is particularized. It was further submitted that the fact that a charge is formulated in general and informal terms is not objectionable as long as the person involved understands what it is that he has to answer. Learned counsel for the defendant contends that the plaintiff confirms in the notes of proceedings before the Stipendiary Stewards that he understands the charge against him.

[7] As regards the presumption of guilt under r 144(4), learned counsel for the defendant submitted that the trainer was given every opportunity to rebut the presumption.

[8] Finally it was submitted by learned counsel for the defendant that one needs to be an expert in the field of horseracing before they can qualify to interpret the Rules of Racing to reflect its intention. The Racing Stewards fit this category and hence the courts are generally reluctant to interfere.

[9] Rule 144(1), (2), (3), (4) and (5) of the Rules provide as follows:

(1) Every horse which runs in a race shall be run on its merits.

(2) The Rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity of winning or of obtaining the best possible placing.

(3) It shall be the duty of a Trainer to ensure that adequate instructions are given to the Rider of any horse in his care and no owner or Trainer shall give any instruction to the rider of any horse which if obeyed could or would prevent the horse from winning a race or of obtaining the best possible placing, neither shall the Owner, Trainer the rider or any other person prevent or try to prevent in any way any horse from winning a race or of obtaining the best possible placing.

(4) Where any Rider is found in breach of sub-rule (2) of this Rule, the Trainer of the horse in question shall be deemed to be in breach of this Rule unless the Trainer satisfies the Stipendiary Stewards that the rider failed to comply with instructions given to him under sub-rule (3) of this Rule which if followed would have enabled the Rider to have obtained the best possible placing, and in this event the Trainer shall be found not to have been in breach of this Rule.

(5) When in the opinion of the Stipendiary Stewards any person has committed any breach of or is guilty of any offence under sub-Rule (2), (3) or (4) of this Rule, the Stipendiary Stewards shall disqualify such person. The disqualification shall be for a period of not less than one (1) year and not more than three (3) years. In addition the Stipendiary Stewards may impose a fine not exceeding S$50,000 or its equivalent.

[10] Rule 144 in essence creates an offence where the horse was not allowed to run on its merits. Subrule (1) provides that the horse shall be run with sufficient vigour and effort whereas sub-r (2) imposes a responsibility on the rider to take all reasonable and permissible measures to ensure that the horse is given full opportunity of winning or obtaining the best possible placing. Subrule (3) provides for the responsibility of the trainer to give adequate instructions to the rider to enable the

horse to win or to obtain the best possible placing. Subrule (4) raises a presumption that if a rider is found guilty for not riding the horse with vigour, then the instructions given to the rider was not to ride the horse to obtain the best possible placing. This rule however allows the trainer to rebut the presumption by raising the defence that the rider had failed to comply with his instructions given under sub-r (3). A B

[11] The evidence before the Stipendiary Stewards was the video tape of the race which was shown to the plaintiff, specifically to the part where the rider has faulted. The plaintiff was informed that the rider had not ridden the horse on its merits and therefore did not give the opportunity to win or get the best possible placing in the race. The plaintiff was then asked whether he was satisfied with the way the rider rode the horse wherein the plaintiff said that he was. It is to be noted that the rider had given evidence that he rode to the instructions of the plaintiff. Having made a finding of fact that the horse was not ridden on its merits and the plaintiff not having rebutted the presumption in r 144(4) but instead insisted that he was satisfied with the manner the rider rode the horse, the Stipendiary Stewards found the plaintiff guilty. C D

[12] The Court of Appeal in *Re Gilmore* [1957] 1 All ER 796 defined the concept of 'error of law' as that when a tribunal comes to a conclusion which cannot reasonably be entertained by them if they properly understood the relevant enactment. In the case of *Mohamed v Commissioner of Lands & Mines, Trengganu & Anor* [1968] 1 MLJ 227, the decision by the Commissioner was held to be based on an error of law as the Commissioner had acted on a 'principle unknown to the law and had therefore fallen into error on point of law.' The Federal Court in the *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152 ruled that there was no error of law on the face of the record because the custom officer had not misconstrued the law. Other examples of errors of law as stated by MP Jain in *Administrative Law of Malaysia and Singapore* (2nd Ed) are such as ignorance of law or wrong reasons for taking a decision. E F

[13] From the records and given the facts, I do not think that the Stipendiary Stewards had misconstrued the rules or had disregarded the rules. Neither had the Stipendiary Stewards took a wrong reason in finding the plaintiff guilty nor could it be said that it had come to a conclusion which cannot reasonably be entertained if it properly understood sub-r (4). It is my view that the charge under sub-r 4 is not defective, bad or illegal. There is no error of law on the record and this ground of contention by the plaintiff therefore fails. G H

[14] On the second ground of contention, I do not think that sub-r 4 is unreasonable. Though it provides for the presumption of guilt of the trainer once the rider is found guilty under sub-r (2), this presumption of guilt may be rebutted which the plaintiff failed to do in the instant case. As to the plaintiff's contention that sub-r (4) is contrary to natural justice, I find no merits in this contention for the reason that there is ample evidence from the notes of proceedings that the plaintiff was given every opportunity to rebut the presumption. He understood the charge; was given a fair hearing and he was represented by a lawyer before the Racing I

Stewards. As regards the unreasonableness of the Rule, I adopt what had been said by Justice KC Vohrah in the case of *Woon Kwok Cheng v Tan Sri Chang Min Tat & Ors* (Pulau Pinang Civil Suit No 22–317 of 1991, unreported) that:

> It is quite obvious that the body that made the rule considered the offence of not riding a horse on its merits to be a serious offence and intended the offence to be severely dealt with and so provide a deterring effect on an offender and an eye opener to others. The rule makers were certainly entitled to this view and indeed they should given every leeway to properly regulate and keep honest the conduct of races.

[15] The plaintiff's third ground of contention premised on art 5 of the Federal Constitution is with respect, misconceived. The Federal Court in the case of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 at p 101 said:

> In our view, the words 'personal liberty' should be given the meaning in the context of art 5 as a whole.
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> ...
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> We therefore disagree with the Court of Appeal that the words 'personal liberty' should be generously interpreted to include all those facets that are an integral part of life itself and those matters which go to form the quality of life. We are of the view that other matters which go to form the quality of life has been similarly enshrined in Part II of the Federal Constitution under 'FUNDAMENTAL LIBERTIES'…

[16] It clear therefore that 'life and personal liberty' in art 5 do not encompass the other facets of life. Hence, the plaintiff's disqualification which resulted in him being deprived of his livelihood is not at all an issue under art 5 of the Federal Constitution. Based on the foregoing, the plaintiff's application in encl 1 was dismissed with costs.

Plaintiff's application dismissed with costs.

Reported by Peter Ling